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Mr. WALPOLE's

CASE

IN A

LETTER

FROM

A Tory Member of Parliament,

TO HIS

Friend in the Country.

But that the House of Commons have committed any Man for any Offence that had no relation to a Member of the House of Commons, as it is against Law and Reason, so no Instance can be given 'till this Parliament. Judge Jenkins, concerning the Oppressions of the People.

Parliaments are as the Times are: If a turbulent Faction prevails, Parliaments are wicked; if the Times be sober and modest, prudent and not biassed, the Parliaments are right, good and honourable, and they are good Medicines and Salves; but in this Parliament ——— Idem, Page 42.

L O N D O N:

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[Price Sixpence.]





S I R,



THE Town has been a long Time in expectation of seeing some Account of Mr. *Walpole's* Case Printed and Publish'd, which he, and his Friends, I presume, at first declin'd, to avoid giving any Offence to the Parliament; lest a Handle might be taken from thence, to put new Hardships upon him, when his second Election should come under Consideration.

FOR what Reasons he still neglects to do himself Justice, I cannot pretend to determine, tho' I could heartily wish, he would undertake himself to give the World that Satisfaction, which I am persuaded, a true state of his Case must give to all impartial Men; but as the Defence he made in *the House*, to which I gave all possible Attention, so intirely convinced me, that I thought, I could not in justice give my consent, either to the Censure, or to any part of his Punishment, I hope, I shall be pardon'd, for endeavouring to give you a state of the Case, as it appear'd to me upon a full Hearing and a due consideration of the Evidence on both sides; which I choose the rather to do, that you may see by what Reasons I was induc'd to differ from my Friends, and Vote contrary to those Gentlemen with whom I have the good Fortune generally to agree.

To set this Matter in a clear Light, it will be necessary to consider the Resolution which the *House of Commons* came to, and the Crimes that Mr. *Walpole* is thereby charg'd with.

THE Resolution was, 'That *Robert Walpole, Esq;* (a Member of this House) in receiving the Sum of *Five hundred Guineas*, and in taking a Note for *Five hundred Pounds* more, on Account of two Contracts for Forage of her Majesty's Troops quarter'd in *North-Britain*, made by him when *Secretary at War*, pursuant to a Power granted to him by the late *Lord Treasurer*, is guilty of a high Breach of Trust, and Notorious Corruption.'

THE Crimes then are, *A High Breach of Trust*, and *Notorious Corruption*; Crimes indeed of a very heinous Nature, and either of them, I shall always think sufficient, to subject any Member to the just Resentment and Censure of Parliament; but at the same time, I can never be of Opinion that any Man ought to suffer for being barely charg'd with a Crime, unless it be prov'd upon him, either by positive Evidence, or by such Circumstances, as make the Presumption full, and clear against him; much less can I give my consent to Censure or Punish any Man, when most Circumstances concur in his Justification, where the Presumption is stronger in his Favour than to his Prejudice; and especially where there is *positive Evidence upon Oath* to acquit, and not the least pretence of any direct Evidence to convict; and that this was Mr. *Walpole's* Case, I am confident, you will agree with me, when I have laid before you the Nature and Circumstances of the Charge against him, and the Defence that he made in his own Vindication.

As to the first Article of the *Breach of Trust*, I must observe to you, that after Mr. *Walpole* had been heard in his Place, and was withdrawn, there was not one *Member of the House* that did in the least insist upon that Head; all that spoke, were either silent upon it, or did even admit, that he had clear'd himself of all Imputation upon that

Score;

Score; so that indeed, I can no ways Account, how that came to be Part of his Censure, but that being made Part of the *Pocket-Question*, agreed upon the Night before, not one Word of it was to be alter'd, let the Evidence upon Hearing be what it would; and indeed, I could wish, for the Honour of our *Party*, this had been managed with a little more Dexterity, than to let a Question, which was the *Judgment of the House in a Criminal Matter*, and is suppos'd at least to be form'd upon the Evidence that was given on both Sides, be moved by a Gentleman, who, not being able to repeat his *Written Question*, without having Recourse to his Paper, unhappily discovered that the Sentence was fix'd and agreed without Doors; and seconded by another, whose Talent in repeating, for no School-Boy says his Lesson better, had betray'd him to speak a fine Speech upon Corruption and Bribery in general; which being made before the Cause was heard, had the Misfortune not to have one Word in it applicable to the Facts that had been given in Evidence, and will serve just as well upon any other Occasion.

To remove all Suspicion of Mr. *Walpole's* having any Prospect of Advantage to himself, or any Body else, in making the Contract, he proved, 1. That it was not in his Power; as not being the only Person employed or entrusted by the Government to make the Contracts; and, 2. That the Contracts were made upon the lowest and most advantageous Terms that could possibly be had for the Government.

UPON the March of the *English Dragoons* into *Scotland*, which by the Laws of *Scotland* could not be quarter'd in that Part of the Kingdom, according to the Method prescribed by the Laws of *England*, the Duke of *Queensberry*, the Earls of *Marr*,
Loudon,

London, and *Seafeld*, and other *Scotch* Lords, that were of the *Queen's* most Honourable Privy-Council, were ordered to meet, and consider of the most proper Methods of providing Forrage for the Troops in *North-Britain*; who summoned to their Assistance all the *Scotch* Officers of Dragoons that were in *London*, and did give their Opinions to *Her Majesty*, that the most proper and practicable Method of providing Forage, was to make Contracts with *Commissaries of Forage*, as had been usually practised in *Scotland*, and recommended Sir *Samuel Maclellan*, Lord Provost of *Edenburg*, who had been frequently employed in this Service before the Union, as a proper Person to be treated with.

THE Proposals of Sir *Samuel Maclellan* were refer'd to Lieutenant-General *Erle*, Mr. *Howe*, Paymaster-General to her Majesty's Forces, and Mr. *Walpole*, who at several Meetings did likewise consult all the *Scotch* Officers; and the Prices of *Nine-Pence* and *Three-Pence Halfpenny*, for Dry and Green Forage for each *Twenty-four Hours*, were judged reasonable, from the best Information that could be had, and agreed to accordingly by Mr. *Erle*, Mr. *Howe*, and Mr. *Walpole*, who were jointly and equally concerned with Mr. *Walpole* in settling and agreeing the Prices, altho' the Contract was afterwards prepared and executed by him, *Virtute Officii*, as Secretary at War; and this Mr. *Erle* did declare in the *House of Commons* at the time when the matter was under Consideration.

As the making the Contract, and agreeing the Prices and Conditions, was not left solely to Mr. *Walpole*, so he prov'd beyond Contradiction, that the Bargain was, upon all Accounts, made upon as advantageous Terms for the Publick, as possibly could be had; and this was made appear, by comparing the Contract with all former Contracts made

made before the Union; with the Prices that the *English* Dragoons had been obliged to pay from the time they march'd into *Scotland* to the making of the Contract; and with the Prices that the *Scotch* Dragoons had paid that very Year before a Provision was made for them by the Contract.

It would be too tedious to recapitulate here the several Instances that were given to make good this Part of Mr. *Walpole's* Defence, but I beg leave to mention one Observation or two upon this Head that seem'd to me very Material, and shew'd the manifest Advantage that the *Commissaries of Forage* had before the Union, from the Nature of the Payments, and the Security for their Money. In those Contracts the *Six Months Cess* and the *Inland Excise* were assign'd over to the *Commissaries of Forage*, with full Powers to retain in their own Hands, and to re-imburse themselves all such Sums of Money as they should have advanced. In this Contract there could be no Security for the *Queen's* Allowance, but such Provision as the subsequent *Session of Parliament* should think fit to make, there being at that time no Money voted or granted for this Service; which Payments, whenever they should be made, were still liable to the Hazard of a great Loss by the Discount upon Tallies: And yet notwithstanding these apparent Disadvantages, the *Queen's* Allowance by this Contract was less than the former Allowances by Poundage before the Union for the like Number of Horses; and it was evident that the Profit upon the whole Contract to the Undertakers did not exceed 15 *l. per Cent.* which will never be thought an unreasonable Profit by any body that is at all conversant in publick Business, where there is no Parliamentary Security, where considerable Sums of Money are to be advanced, and a long Credit must be given.

BUT

BUT a Contract having since been made at lower Rates, an Inference was drawn from thence of the unreasonableness of this Contract ; but if this Contract was justifiable, compar'd with all former Contracts, and the Circumstances and Prices that govern'd at that time, 'tis very unjust to make any Imputation from the Plenty or Scarcety, Dearness or Cheapness of Forage that might afterwards happen; besides the new Contract that was made upon lower Terms prov'd destructive of the Service, as appear'd by a Memorial sign'd by the *Colonels* and *Commanding Officers*, which was presented at the *War-Office*, setting forth, ' That upon Account of the Forage which ' was contracted for at such low Rates, the Country ' cannot afford to bring it to Quarters, nor to give ' good in its kind; and that the Contractor has ' not any Magazines as he ought to have for the ' necessary supply of the Troops; for want where- ' of the Troops are so dispersed, and separated at ' such Distances, that they are render'd utterly in- ' capable of any Service, and the Officers can no ' ways be answerable for their good Order and Dis- ' cipline.'

By what has been said, it appears, that all possible Care and Precaution was used to obtain the most Advantagious Terms that could be had for the Government, and that the Forage 'could not be supplied at lower Rates consistent with the Service, which leaves no room to suspect that the Contract was made with any View or Prospect of a private Advantage to Mr. *Walpole*, or any other Person, and sufficiently clears Mr. *Walpole* from the first Part of the Charge, wherein he is said to be guilty of a *High breach of Trust*.

I come now to the Second Article, wherein Mr. *Walpole* is charg'd with *Notorious Corruption*. A Censure of this Nature ought to be grounded upon Evidence,

Evidence, where the notoriety of the Fact makes the Truth unquestionable; and not upon Suspicion, which cannot in any Justice be thought sufficient to call a Crime notorious; and that there was nothing but a bare Suspicion, in this Case, may truly be affirm'd, because the Charge itself amounts to no more before it comes to be controverted; but when *positive and express Evidence upon Oath* is brought in opposition to a *bare Presumption*, with what Justice can a Crime be call'd notorious? But if what was offer'd in this Case had been only in mitigation of the Crime, I should not have thought the Proceedings so very extraordinary: But as the Evidence that was given did in my Judgment fully acquit Mr. *Walpole*, I will endeavour to give you the same Satisfaction that was given me, by considering and stating, as far as I am able to recollect it, the Evidence as it stood on both sides.

THE ground of the Charge is contain'd in Mr. *Montgomery's* Deposition, the chief part of the Defence in the Deposition of Mr. *Mann*, and the Narrative of Col. *Douglas*. The two first were sworn before the *Commissioners of Publick Accounts*, and the *Narrative* is the Substance of the Evidence which Col. *Douglas* gave in his place as a Member of Parliament, which for Mr. *Walpole's* further Justification he reduc'd into Writing, and sign'd. All these I will subjoin at the end of this, that you may have recourse to them as you shall see Occasion. And let me only observe here, that neither the Deposition of Mr. *Mann*, nor the Narrative of Col. *Douglas*, do any ways contradict the Deposition of Mr. *Montgomery*, but only explain those Facts and Assertions, which are not in themselves a direct Charge, but seem conceiv'd in general and obscure Terms, on purpose to leave room for those unjust Inferences that were drawn from them.

THE Fact charg'd is, ' Mr. *Walpole's* receiving
 ' the Sum of 500 Guineas, and taking a Note for
 ' 500 *l.* more, on Account of Two Contracts for
 ' Forage made by him, &c.' The Evidence to sup-
 port this, is, that part of Mr. *Montgomery's* Deposi-
 tion, that says, ' This Deponent gave Mr. *Walpole*
 ' a Bill or Note payable to himself, or Order, and
 ' deliver'd it into his Hands; and that he paid the
 ' said Sum to Mr. *Mann*, who deliver'd the Note to
 ' this Deponent with Mr. *Walpole's* Receipt upon
 ' the back of it. The like for the Second Year.'
 The Questions will then be, Upon what Account
 these Notes were given to Mr. *Walpole*; and whe-
 ther the Money was received by him, for him, or
 for his Use; even Mr. *Montgomery* the Informer
 swears, ' That Sir *Samuel Maclellan*, who made the
 ' first Contract with Mr. *Walpole*, told him when
 ' he was at *London*, and soon after upon his Death-
 ' bed at *Edinburgh*, did declare the same, that a
 ' Friend of Mr. *Walpole's* was to be a Sharer in the
 ' Contract.' Colonel *Douglas*, who was equally
 concerned, declares, ' That Sir *Samuel* told him,
 ' that among others, he had admitted a Gentleman
 ' in *London*, recommended to him by Mr. *Walpole*,
 ' for a Share, and that he always understood, that
 ' a Sharer was to bear equal Risque with the rest
 ' in case any Loss should be.' And Mr. *Mann* swears,
 ' That by an Agreement betwixt him and Sir *Sam-*
 ' uel *Maclellan*, he was to be a Sharer in this Un-
 ' dertaking, at equal Profit or Loss, as should hap-
 ' pen or arise in performing the Contract, together
 ' with such other Partners as should be taken in
 ' the Contract by Sir *Samuel Maclellan*, upon his
 ' Arrival in *Scotland*.' So that all the Evidences
 agrees, a Third Person, a Friend of Mr. *Walpole's*,
 or recommended by him, was to be concerned; and
 Mr.

Mr. Mann swears positively himself to be this third Person.

THE next Step is, Mr. *Montgomery* swears, ' That *John Campbell* and Colonel *Douglass* directed him to pay 500 *Guineas* to Mr. *Walpole*. ' What says Colonel *Douglas* to this? That Sir *Samuel Maclellan* being dead, and he not knowing the Person, nor at that time remembering his Name, judged it most proper to have the Money made payable to Mr. *Walpole*, or Order, for the Use of his Friend; and that upon hearing the Name of Mr. Mann, he recollects that to be the Name of the Gentleman that Sir *Samuel Maclellan* named, as the Person recommended to be a Sharer in the Contract.' This surely explains why the Notes were made payable to Mr. *Walpole*, and deliver'd to him, and is a further Proof, that Mr. Mann was from the beginning the Person concerned in the Contract, and for whom the Share was reserv'd by Sir *Samuel Maclellan*.

Mr. *Montgomery* likewise swears, ' That he paid the said Sum to Mr. Mann, who delivered him the Note with Mr. *Walpole's* Receipt on the back of it.' This Mr. Mann admits to be True, and at the same time upon his Oath declares, ' That he received the Money due by the said Note from Mr. *Montgomery*, at several times, for which he gave his own Receipts, and in his own Name, at the several Times of Payment; which Receipts, at the Payment of the last Sum, were cancell'd, and a Discharge or Receipt in Full was written upon the back of Mr. *Montgomery's* Note, over Mr. *Walpole's* Name, that was before only a Blank Indorsment, which was done upon closing the Account betwixt Mr. *Montgomery* and the Depo-
nent, as is usual upon the like Occasions.' And here it is to be observed, that this Note remain'd

all this time in Mr. *Mann's* Hands, until it was taken up and cancell'd, together with the several Receipts at the Payment of the last Sum. And in the same Affidavit Mr. *Mann* further deposes, ' That the several Sums of Money receiv'd by him ' from the said Mr. *Montgomery* upon the two ' Notes of *Five hundred Guineas* and *Five hundred Pounds*, were receiv'd by him for his own sole ' Use and Benefit, and that he has not paid the ' said Sums, nor any Part thereof, nor accounted ' for them, nor is under any Obligation or Agree- ' ment to pay or account for the same, or any Part ' of them, to any Person whatsoever, but that the ' same does, and is to remain to his own sole Benefit ' and Advantage.'

Is it possible then that any thing can be more clear and exprefs than the Answers that are given to every Part of the Charge against Mr. *Walpole*? Or could any better Evidence be expected in this Case, than to prove *by Evidence upon Oath* that Mr. *Walpole* was no ways concerned but in recommending Mr. *Mann* to be a Sharer in the Contract; that the Death of Sir *Samuel Maclellan*, who alone had negotiated this Affair, occasion'd Mr. *Walpole's* Name to be made use of; that Mr. *Walpole* endors'd the Note in form only, as an Assignment to Mr. *Mann*, for whose Use and Benefit the Note was given; and that Mr. *Walpole* had not the least Interest or Advantage, directly or indirectly in this whole Affair?

BESIDES the *positive Evidence upon Oath*, the concurring Circumstances render even the presumption stronger in Mr. *Walpole's* Favour, than to his prejudice: The first Contract was made in *May*, 1709, to determine in *May*, 1710; but the first Note was not given 'till the 29th of *June*, 1710, which was above a Twelvemonth after the Contract was made:

made: Is it then more reasonable to suppose, that this was given as a Consideration to influence Mr. *Walpole*, in making a Contract, which was executed a Year before, and was then expired; or it was a Proportion of Profit, due to Mr. *Mann*, as a Sharer, for which the other Contractors did not Account to him, until they saw at the Years end the neat Profit upon the whole, and could thereby determine what his Share amounted to? But may it not be presumed that Mr. *Mann*'s Name was only made use of, and that this Share was in truth reserved for Mr. *Walpole*? You have heard already what Mr. *Mann*'s Oath says in Answer to that: But to consider it, by way of Argument; Mr. *Walpole* is supposed in his way of Arguing, to have had Caution enough, not to let his own Name be made use of for this Share, in making the Contract with Sir *Samuel Maclellan*, to have substituted Mr. *Mann* to meet Sir *Samuel* at a Tavern, and to personate him thro' the whole Progress of this Affair, where any Conversation or Discourse was had about it, and not to trust any of the Contractors with the Secret of his being concerned, (for that Mr. *Montgomery* did not pretend to say, that ever he had heard, or believ'd; and Colonel *Douglas* declared directly the contrary) and at last, after all this great Care and Caution, takes the Note payable to himself, and endorses it. Is it reasonable to believe that so much Care and Caution should be us'd all along, and at last be forgot, just when it became most necessary? Is it probable that there should be so much Management, where there was least Danger, and that Mr. *Walpole* should be so weak, as to give his own Hand in Evidence against himself, if he had been really concerned? Had it not been as easy to have had the Notes made payable to Mr. *Mann*, or could that have been forgot, if there
had

had been any Art or Collusion that was before covered and disguised under his Name? For my part, I think the Note being made payable to Mr. *Walpole*, rather argues an Innocence than a Guilt, because nothing is so common and obvious, as to use a third Name, where any Sinister End is to be concealed.

WHAT has hitherto been said, relates chiefly to the first Note only, but is applicable in general to the whole Transaction; but there being some difference in the Circumstances between the two Notes, I beg your Patience for an Observation or two, that chiefly concern the second Note.

It is said, that admitting all that Mr. *Walpole* alledges in relation to the first Contract to be True, and that there is no blame to be imputed to him upon that Account, how came Mr. *Walpole* to make a second Contract upon the same Terms, when he knew there were such a Profit upon the first? In Answer to this, I appeal to the Proceedings of the *House of Commons*, printed by their Order; where by the Dates you will find that the second Contract was made before the first Note was given; the first Contract was made for supplying Forage from *May, 1709, to the 14th of May, 1710*, which being then determined, the second Contract for Forage, from the *15th of May, 1710, to the 15th of May, 1711*, was made before the Note was given, which was on the *29th of June, 1710*, and in Consequence Mr. *Walpole* at making the second Contract, had no Knowledge of the Profit that arose from the first.

A great Stress is laid upon Mr. *Walpole's* having endors'd the first Note, which is call'd a giving his Receipt for the Money; but the second Note, it seems, was never endors'd at all; and yet there had been above 400*l.* paid upon it, for which Receipts

ceipts were given by Mr. *Mann*, or for his Use, upon distinct Papers, and not entered upon the Note, nor any mention made of Mr. *Walpole*, to whom the Note was made Payable, and without whose Order or Endorsement, there could be no Discharge for the Money; what stronger Presumption can there be, than that which Mr. *Montgomery* at the time of paying this Money was satisfy'd, that Mr. *Mann* had a Right to the Money, whose Discharge he took for so great a Sum, without any mention made or relation had to the Note, upon which it was; that to read this Note, and the Receipts that were given for the Money, as they are printed by Order of the *House of Commons*, is almost alone sufficient Evidence, to convince any Man, that this Money was paid for the Use and Benefit of Mr. *Mann*; and that Mr. *Montgomery* without being satisfy'd it was so, would hardly have paid such a Sum of Money, for which he had still been accountable.

I remember there was an Objection made, from something that dropt from Mr. *Montgomery* at the Bar of the *House*, as if the *five hundred Pounds* receiv'd by Mr. *Mann*, was more than a just Share, arising from the Profits of the Contract. In Answer to this, I must observe, that the Share reserv'd for Mr. *Mann*, is Stated by the *Commissioners of Publick Accounts*, to be a Fifth Part, and the Share for Sir *Alexander Murray* by the Evidence of Col. *Douglas*, and the Oath of Sir *David Dalrymple*, who was likewise Sworn upon this Account by the *Commissioners*, to be a *Fourteenth Part*; and Sir *Alexander Murray* receiving for his *Fourteenth Part* 200*l.* proves the Profit upon the whole to be about 2800*l.* which entitled the five principal Partners to above 500*l.* a Piece for their respective Shares; but having this occasion to mention the Profits, it will
not

not be improper to acquaint you, that each Year's Contract amounted to about 20,000 *l.* that the Profit upon the whole, may not be thought Exorbitant.

I have heard an Objection raised from Mr. *Mann's* refusing to be a second Time Examined by the *Commissioners of Publick Accounts*, from whence Consciousness of Guilt is infer'd, as if the Cause was not able to abide a stricter Examination; In answer to this, 'tis first observable, that if there be any Weight in the Objection, it could have no Weight or Influence in the *House of Commons* in convicting Mr. *Walpole*, because the Complaint of Mr. *Mann's* refusal was not made to the *House*, 'till after the whole Proceeding was over and pass'd: But if it makes any Impression upon Men's private Opinions, 'tis necessary that the World should know, that when Mr. *Mann* went and voluntarily offered himself to be Examined by the *Commissioners*, after the Deposition was made in Justification of Mr. *Walpole*, Mr. *Mann* was Examined and cross-Examined upon his Oath, by the *Commissioners*, for above *Three Hours*, from whence they formed that notable second Deposition, that they thought worth presenting to the *House of Commons*; but in forming this second Deposition, they made themselves the sole Judges of what should be inserted and what omitted, and thereby left out several Things that were material to explain the other Parts of the Information; this Method of proceeding Mr. *Mann* might well apprehend would tend more to ensnare him, than to set the Matter in a true Light, and by the Account that I have heard of the Methods that the *Commissioners* take in their Examinations, and reducing them afterwards into Form, wherein altho' they add nothing, they take upon them to leave out as much as they please, which is never more than

than all that makes against their Purpose; I do not at all wonder that any Man that has the least regard to his own Reputation, is unwilling to subject himself to such new Methods of Justice: But if seven such ingenious Persons were not able in *three Hours* Examination to puzzle and confound an illiterate Person, enough to draw from him any thing that did in the least affect Mr. *Walpole*, it will be very hard to make an inference to Mr. *Walpole's* Prejudice, because Mr. *Mann*, who is by no Law subject to their Jurisdiction, as having never been concerned in any publick Capacity, was unwilling to be Examined again upon his Oath, after he had given them all the Information that he could; and had submitted to a *Three Hours* Examination the Day before.

I have now given you the best Account I am able from my Memory, and the short Notes I took upon this Occasion, of the *Evidence* that convinced me that Mr. *Walpole* was neither Guilty of the *Breach of Trust*, nor the notorious *Corruption*, that was laid to his Charge; such Evidence, as I must declare shall always have Weight with me; *Evidence upon Oath*, the Oath of a Gentleman of known Substance, unblemished Character, and undoubted Credit and Reputation, supported by the most publick and solemn Declaration of a Member of Parliament (where no Oath can be taken) and confirmed by so many concurring Circumstances and very strong Presumptions. If on the contrary, bare Presumption and remote Inferences drawn from an Information loosely and artfully expressed, and for which the *Informer has since been so well Rewarded*, can come in Competition with such *positive Evidence upon Oath*, whose Honour and Reputation, whose Life or Estate can ever be in any Safety?

WHAT a Precedent will this be for any future Parliament, that shall be inclined or instigated by a Ministry to oppress any particular Member, if such Evidence, as in no other Court, by no Jury would be admitted to convict a Man even of *Petty Larceny*, shall be then thought sufficient to deprive a Gentleman of his Liberty, his Seat in Parliament, and to brand his Name and Character with the infamous mark of Corruption? The Time may come, when it may be thought the peculiar Privilege of the *Guardians of the Liberty of the People*, to Censure, Defame and Imprison, without Evidence; or even contrary to direct Evidence, but hard will be the Fate of any Gentleman, that shall suffer thus without Redress, who is Innocent, and prov'd Innocent, by all the known Rules of Law and Justice, If Judges are once allowed to act, as they shall believe or disbelieve, in their own private Opinions, and are not to be governed and directed by the Evidence that is given before them, how precarious must the Liberty and Property of the Subject be immediately rendered?

IF *positive Evidence upon Oath*, impugn'd by Presumption only, is not sufficient to acquit a Man, who that is charg'd in Parliament can ever be acquitted? Who can tell how soon it may be the Fate of some of those Gentlemen, that our Friends think they are now serving, to have this Practice retorted upon them? Another Parliament may differ as much from this, as this has differ'd from former Parliaments, and those that are now employed, it may be presumed, will have acquired some little Knowledge in Business, by the Time that they may happen to be removed, sufficient, at least, to give some Trouble in Parliament to those that shall then enjoy their Offices; What Ministry, if in times to come there shall ever arise a Ministry, that

that *Delights in* Defamation, and will condescend to such mean and vile Practises, can ever want Informers, to fix a Charge upon such, as shall be then Troublesome or Obnoxious to them for not joyning in their Measures? And how will it be possible for any Man to escape a Censure, if what some Men may be willing to call a Presumption, shall be admitted against *positive Evidence upon Oath*? What Security can any one have in such a Case, unless the Country Gentlemen, who have wanted Opportunities to get Knowledge and Insight, into the Publick Business and Accounts, shall begin to think it ill Policy, to be such Tools to a Ministry, as to remove from among them such, as are able to prevent their being imposed upon.

THE Prejudice of Party might perhaps have prevailed upon me to come up to a Censure of Mr. *Walpole*, and the Influence of those, who thought it necessary to remove him, might have induced me, to gratify them so far, as to have joyned in barely ridding them at present of such troublesome Company; but when nothing less than a Censure of *notorious Corruption*, which suppos'd at the same Time Subordination in Mr. *Walpole*, and Perjury in Mr. *Mann* would satisfy, I could not persuade my self to go such a length, in the Face of as direct and positive Evidence, as in my Opinion ever was or can be given.

I do allow, that in some Cases a presumptive Evidence must be admitted to be of Weight, but never where it is contradicted by a *positive Oath*; but where the Evidence is only Presumption, how many Circumstances are to be consider'd, that will very much strengthen or invalidate the Probability? In this Case had there been nothing but the Character of the Person concern'd, I must own it would have weighed very much with me; that whichever Body easily believes of one Man, is often very incredible

of another ; and here I must do Mr. *Walpole* the Justice to say, that his worst Enemies never so much as suspected him, of making any indirect Profit or Advantage to himself, in the several Offices where he has had the Honour to serve. The Opportunities that he has had of getting Money, and such Temptations as he has withstood, that few perhaps that went before him, or shall come after him, will have Virtue enough to resist, are so many Proofs of his Integrity, sufficient alone, with any impartial Man, to outweigh a bare Presumption ; and when I see any Gentleman that has served in such Employments undergo so strict an Inquisition, by such as want neither Will nor Power to sink his Character, and find no more is laid to his Charge, and that no better supported, I shall always be of Opinion that such a Prosecution serves more to advance his Credit and Reputation, than any ways to sully the Honour and Esteem which he had obtained in the World.

It is the Business and Duty of the *House of Commons* to enquire into all Abuses and Corruptions, and when any such shall be made out before them, to do themselves and their Country Justice ; but if I should live to see the Day, when Men are try'd, and not their Actions ; when a Prosecution is carried on, with more regard to the Person, than his Crimes ; I hope, I shall be excused from joyning in any such barbarous and unjust Attempt.

THE greatest Repröach to Parliaments has been, the notorious Partiality of Committies of Elections, which tho' 'tis a Practice that all Parties have been concerned in, is now grown to such a height, as to give just Offence and Scandal to all the thinking part of Mankind ; but if this Spirit of Injustice shall still further prevail, and diffuse it self thro' all the Proceedings of Parliaments, how grievous must it be to the People, how destructive and derogatory to the Honour

Honour and Dignity of Parliaments? To determine the Right of an Election, not by the Merits of the Cause, but by the *Party* the Member espouses, is certainly most unjust; but to make *Party* the Rule and Measure of all our Actions, to Condemn, or Acquit by *Party*, in the only Judicature we have, which is that of our own Members, to blast the Honour and Reputation of a Member, and only for *Party*, to Imprison, and to add to this the highest Penalty that is in our Power to inflict, Expulsion, and all this for the sake of *Party*! If this shall ever be thought to be the Case, what can lessen more the Authority and Weight of Parliamentary Censures, what can tend more to make Parliaments not only the Contempt but Aversion of Mankind?

As I could by no means consent to the Sentence that pass'd upon Mr. *Walpole*, so could I as little concur with the Punishment that was inflicted upon him; there is no more known Rule of Justice than that Punishment should be always adequate to the Crime; and admitting Mr. *Walpole* to be Guilty of what was laid to his Charge, I confess I thought it a particular Instance of Severity, to proceed to such extremity with him. Had his Offence been of the highest and blackest Nature, and surely no body will say this was so, it was not in the Power of the *House of Commons* to inflict any further Punishment upon him, unless they had ordered him to be prosecuted at Law, which I cannot think was avoided by Chance, or out of good Nature, but the want of such Evidence, as every Man knew would be required in *Westminster-Hall*.

If the Name of Liberty is not entirely forgot in *England*, and is still of any Value amongst us, if the Privilege of sitting in Parliament, is to be thought the first Honour an *Englishman* can be Ambitious of, and to be expell'd from that *August Assembly*
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the last Disgrace that can befall him, if a Man's Honour or Reputation is, or ought to be dearer to him than Life it self, I hope, I shall be excus'd by those with whom I differ'd, that I could not give my consent to *a five Months Imprisonment*, which being attended with a great Expence, is likewise *a very considerable Fine*, to an *Expulsion from Parliament*, and to the fixing the *infamous Brand of notorious Corruption*, to be Recorded in the *Journals* to all Posterity, upon a Gentleman's Name, whose Character is not inconsiderable, whose Defence was as strong, and positive, as Words can express; and especially for a Fact, which if it had been true, did not, in my Opinion, deserve the least of those Severities.

I am, Sir, yours, &c.

London, June 5th, 1712.

The Deposition of Mr. Robert Mann.

THIS Deponent being sworn, does upon his Oath declare, that in the Year 1709, he was, by the Recommendation of Mr. *Walpole*, the then Secretary at War, admitted and taken into a Share or Partnership of a Contract made for furnishing green and dry Forage to the Troops in *North-Britain*, by Sir *Samuel Maclellan* and others; and that by an Agreement betwixt him and Sir *Samuel Maclellan*, he was to be a Sharer in this Undertaking, at equal Profit or Loss, as should arise or happen in performing the Contract, together with such other Partners as should be taken into the Contract by Sir *Samuel Maclellan*, upon his Arrival in *Scotland*.

THAT about a Twelve Month after, Mr. *Walpole* gave to this Deponent a Note for Five Hundred Guineas,

Guineas, signed by Mr. *Montgomery*, which Mr. *Walpole* told him had been left with him for this Deponent, by the Contractors for Forage in *North-Britain*, which Note being made payable to Mr. *Walpole*, or Order, Mr. *Walpole* did then endorse the Note with his own Name, upon Delivery of it to this Deponent.

THAT this Deponent has received the Money due by the said Note from Mr. *Montgomery* at several Times, for which he gave his own Receipts, and in his own Name at the several Times of Payment. Which Receipts, at the Payment of the last Sum were cancell'd, and a Discharge or Receipt in full was wrote upon the Back of Mr. *Montgomery's* Note over Mr. *Walpole's* Name, that was before only a blank Endorsement, which was done upon closing the Account betwixt Mr. *Montgomery* and this Deponent, as is usual upon the like Occasions.

THAT upon a second Contract for the Year 1710, this Deponent received a Note of Mr. *Montgomery's* for Five Hundred Pounds; that this second Note is made likewise payable to Mr. *Walpole*, or Order, and that this Deponent has received the greatest Part of the Money due thereon, although the same is not endorsed by Mr. *Walpole*, and that Mr. *Montgomery* has paid this Money, upon Receipts given in the Name, and for the Use of this Deponent, upon distinct and different Papers, and not enter'd upon the Note which is payable to Mr. *Walpole*, or Order, but not endorsed by him, or assigned to the Use of any Person; and this Deponent does declare, that the several Sums of Money received by him from the said Mr. *Montgomery* upon the two Notes of *Five Hundred Guineas*, and *Five Hundred Pounds*, were received by him for his own sole Use and Benefit; and that he has not paid
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the said Sums, not any part thereof, nor accounted for them, nor is under any Obligation or Agreement to pay, or account for the same, or any Part of them, to any Person whatsoever; but that the same does and is to remain to his own sole Benefit and Advantage.

Rob. Mann.

Jur at. 14. Jan. 1711-12.

Geo. Lockheart.

Hen. Bertie.

S. Winnington.

Fra. Annesley.

Tho. Lister.

Will. Skippen.

H. Campion.

The Second Deposition of Mr. Robert Mann upon his Examination before the Commissioners.

MR. *Robert Mann* being sworn, deposed, that hearing a Contract was to be made for Forage for the Troops in *North-Britain*, he applied in Summer, 1709, to Mr. *Walpole*, then Secretary at War, to be concerned therein, but does not know that Mr. *Walpole* recommended him by Name, not being present; that he afterwards met Sir *Samuel Maclellan* at the War-Office, and being made known to him by Mr. *Taylor*, Mr. *Walpole*'s Clerk, went with him to a Tavern; that this was the only time he was in his Company, and no Witnesses were present; that he then pressed Sir *Samuel* to let him know what Share he was to have in the Contract, and who were to be his Partners. Sir *Samuel* said he could not tell him then, but that he should have a Share liable to Profit or Loss, but did not know how many would be concerned 'till he was in *Scotland*, and then he would send to him, but he never heard from him; that he further desired

fired to know what Money he must advance on Account of the Contract, and Sir *Samuel* answer'd him, What need you be so inquisitive, since you shall benefit by it? He further deposeth, That he did not know who were the other Contractors 'till this Matter was brought into Dispute; That he never corresponded with Sir *Samuel*, or any other of the Contractors, or ever had any Discourse with them, or ever medled with the Management, nor ever saw any of the Accounts relating to this Contract; That he received the Note for the Five Hundred Guineas from Mr. *Walpole*; That he was very cautious when in Mr. *Montgomery's* Company, and never said a Word of the Contract to him when he received the Money from him; That he never did advance any Money on Account of the Contract, and never was required by the Contractors so to do; That nobody spoke to him to be concerned in the second Contract, but that he only desir'd Mr. *Walpole* to think of him again; That he never had any Discourse with any other Person in relation to it, and did not know he was concerned in that second Contract till he received the second Note, dated in *August* 1710, from Mr. *Walpole*, to whom it was made payable. He further deposed, That he is related to Mr. *Walpole*, has received his Rents, and transacted Business for him a great while; That he prepared an Affidavit, in order to produce to the Commissioners of Publick Accounts, which Mr. *Walpole* and his Clerk afterwards reduced into the Form in which he presented it,

Jurat. 14 Jan. 1711-12.

Rob. Mann,

Geo. Lockhart.

Hen. Bertie.

S. Winnington.

Fra. Annesley.

Tho. Lister.

Will. Shippen.

H. Campion.

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The Narrative of Colonel Douglas, as given by him in Evidence in the House of Commons, and sign'd by him.

UPON Sir Samuel Maclellan's Return from London to Scotland, he inform'd me, that Mr. Walpole had contracted with him and John Campbell for foraging the Troops in North-Britain, from the 14th of May 1709, to the 14th of May 1710, at Nine Pence in the Twenty-four Hours for dry Forage for each Horse, and Three Pence Half-penny for Grass, and that he had admitted Mr. John Montgomery for a Share; and that he had admitted a Gentleman in London, recommended to him by Mr. Walpole, for another Share, and had promised to admit Sir Alexander Murray for a Fourteenth Share; and that he would take me in for a Share if I pleased to accept of it.

ABOUT eight Months after Sir Samuel Maclellan's Death, at a Meeting with Mr. Montgomery on that Affair, it was agreed, that 500 Guineas should be paid Mr. Walpole's Friend for his Share in the Contract; and Sir Samuel Maclellan being dead, and I not knowing the Person, nor at that time remembering his Name, judg'd it most proper to have the Money made payable to Mr. Walpole, or Order, for the Use of his Friend, and I always understood that that Sharer was to bear equal Risque with the rest, in case any Loss should be; and I do think, that upon hearing the Name of Mr. Mann, I do recollect that to be the Name of the Gentleman that Sir Samuel Maclellan nam'd, as the Person recommended to be a Sharer in the Contract; and I declare, that Sir Samuel Maclellan never told me, nor directly, nor indirectly signified to me, that Mr. Walpole had or was to receive any Sum of Money, or to have any Interest or Share in that Contract.

AND

AND I understand, that the 200 *Guineas* paid to Sir *David Dalrimple* was not upon his own Account, but for the Use of Sir *Alexander Murray*, and I always understood, that the 100 *Guineas* paid yearly for the Use of the Earl of *Leven*, was given in Consideration of Forage for his Horses, which the Undertaker always used to furnish to the Commander in Chief, or to give the Equivalent in Money. The 50*l.* order'd to Mr. *Taylor*, was a Compliment to him upon leaving the Office, for his Trouble, and two Years Correspondence in answering Mr. *Campbell's* Letters, and doing other Business relating to the Contract.

THE 100*l.* yearly given to Mr. *Merril*, was for keeping and stating the Account of the Forage-Money, and I understood that the second Contract was upon the same Foot as the first, and for the same Sharers, except Sir *Samuel Maclellan*, that is dead; and that it can be made appear, that the Prices given in these Contracts are not near so great as those in the Contracts made in *Scotland* before the Union; and it is very well known, that in the Years 1709, and 1710, there was a greater Dearth and Scarcity of Forage in *Scotland*, than had been for some preceding Years, or than can be pretended there is at this present Time.

Geo. Douglas.

The first Note was made payable to Mr. Walpole, or Order, and endors'd by him.

The second Note was likewise made payable to him, or Order, but not endors'd by him.

The Receipts.

Received, Nov. the 25th, 1710, of Mr. James Blackwood, a Note drawn on Mr. Howell for Two Hundred

Hundred Pounds, which, when paid, is in Part of a Note due from John Montgomery Esq; of Five Hundred and Thirty Guineas. I say received,

L. 200.

Per Rob. Man.

Received, June the 7th, 1711. of John Montgomery Esq; One Hundred Pounds, for my Partner, Mr. Robert Man.

L. 100.

Per Will. Daye.

Received, July the 21st, 1711. of John Montgomery Esq; Fifty Pounds, for my Master Robert Man.

L. 50.

Per Edward Shearme.

September 24. 1711.

Received then a Note of John Montgomery Esq; drawn by John Scarlett on John Ward Esq; for Two Hundred Forty One Pounds Twelve Shillings, dated Jan. 25. last past, payable to Baily Archibald Cockburn, Eight Months after Date; which Note I promise to be accountable for on Demand.

Per Rob. Man.

P O S T S C R I P T.

HAVING given you the Trouble of the foregoing Account, I thought you might have a farther Curiosity, to know what passed afterwards, upon Mr. *Walpole's* being re-elected, and again expell'd; upon which Occasion, as I had the Misfortune to differ from the Majority, I will acquaint you with the

the Reasons and Arguments that chiefly weigh'd with me, and upon which I form'd my Judgment.

I need not observe to you, that there was not the least Objection made to the Merits of this Election, the Disproportion in the Numbers upon the Poll, was so great, that all the Engagements made to Mr. *Taylor*, to bring him in, right or wrong, were dropp'd and given up.

THE great Endeavours, and indirect Practices, that were us'd to prevent Mr. *Walpole's* being chose again, are worth the Notice; I need not tell you from what Corner the Expence was supplied; was I but to name the Gentleman that was sent down upon this Occasion, you would immediately conclude, that he travell'd *Carriage paid*, unless a sudden Fit of Generosity came upon him, and his Good-Will to Mr. *Walpole* prevail'd with him to exert more against him, than ever he had the Heart to do for himself; such a particular Obligation Mr. *Walpole* must be sensible of, and I dare answer for him, he will never forget.

As I think the whole Proceeding against Mr. *Walpole* is far from being any Discredit to him, so it must be thought a particular Honour done him, to see his Country still retain the same good Opinion of him, and that so considerable a *Corporation* had Vertue and Resolution enough to do his injur'd Character Justice, and return him, in opposition to Power, Corruption, Party-Malice, and the United Strength of all the *Non-jurors*, *Non-abjurors*, and concealed *Jacobites* of the Country, countenanced by *Court Emissaries*, *Half Receivers General*, and *Itinerant Justices of the Peace*.

BUT being Elected, and returned a Member to serve in Parliament, according to the Law of the Land, and the Law of Parliament, was not sufficient to secure to Mr. *Walpole* his Seat in the *House of Commons*, he that was before Expelled, in the manner you have hear'd, for the same Reasons was not to be
admitted

admitted to Sit upon any Account; to Expel him again in exprefs Words, would have look'd a little too harfh; but to declare him incapable, amounted to the fame thing, and serv'd the Purpose juft as well.

BUT before I enter upon the main Argument, give me leave to obferve, that here not only the Right of the Member elected, but the Rights and Privileges of the Electors, are nearly concern'd; for next to the Disfranchifing of a *Corporation*, and taking from them entirely the Power of Electing, to feclude or expel, without juft Cause, fuch Members, duly qualified, as they have thought fit to elect, is an Invaſion and Violence offer'd to the fundamental and invaluable Privilege, of chooſing their own *Representatives*. I am ſenſible the *House of Commons* has often taken upon them and exerciſed the Power of expelling Members, which has been ſubmitted to, becauſe 'tis hard to tell how or where to find Redreſs; but I will venture to affirm, that no Member, whoſe Right of fitting is undoubted, and not controverted, can legally loſe or forfeit that Right upon Account of any Act or Offence done or committed by him in any other Capacity but that of a Member. A Man may certainly, *quatenus Member*, offend in many Inſtances ſo as to deſerve Expulſion, but I ſhall be ſorry to ſee the Practice of Expelling upon any other Account made familiar to a *House of Commons*; That Method of *weeding out* ſuch as ſhall be diſagreeable to a Majority, and render'd ſo by the Inſinuations of a *Ministry*, may give a *Deſigning Ministry* a Power in Parliament dangerous to the Liberty of the People, may enable them to impoſe the groſſeſt Falſities upon an *ignorant Representative*, may facilitate the paſſing ſcandalous *Miſrepresentations* when ſuch ſhall be neceſſary to ſupport the Cause, may bring Parliaments into a general diſeſteem, when it ſhall be ſeen too late, that their Reſolutions were not founded upon Facts; nor ſupported by Truth, and may end at laſt
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in the utter Subversion of our Constitution; for who can doubt if a *House of Commons* can ever be work'd up to vote Expulsions and Incapacities at the Will and Direction of a *Ministry*, that an *Ill-Ministry* will ever suffer themselves to be troubled with such as are able and will presume to explain, perhaps expose, or even debate against their Measures; that if this Practice shall ever prevail, a Man will be no longer in danger of losing only a Place or Employment at Court, for not complying, but his Place in *Parliament* must follow, that too will become precarious, and be held only, *durante beneplacito*, at the Will and Pleasure of an Arbitrary *Ministry*.

I come now to consider the main Question, Whether Mr. *Walpole* was at the time of his Election incapable of being elected a Member to serve in Parliament, and if he was capable, how far a second Expulsion was just and reasonable?

THE Incapacity must arise either from the Tenour and Words of the *Writ*, or from Mr. *Walpole's* being a Prisoner in the *Tower*, or from his having been expell'd the *House*.

THE Words in the *Precept* from which the Objection is taken, are, *In loco prædicti, &c. alium Tirrgensem eligi facere, &c.* But in this Objection there can be no weight; for the same Person being re-elected, is as much another Burgefs as any other Person would be. Besides, in all Vacancies during the continuance of a Parliament, or in case of an Election being made void upon any account whatsoever, the Words of the *Precept* are always the same; and yet there are innumerable Instances where the same Person has been again elected, and return'd upon the vacancy of himself, and admitted to be duly elected and returned without any Dispute or Controversy.

NOR is there any more ground to say, that being a Prisoner in the *Tower* renders a Man incapable of being

being elected ; whatever subjects a Man to an Incapacity of being elected, does equally subject him to an Incapacity of continuing a Member, altho' duly elected before ; As a *Commissioner of the Customs or Excise* is made by the Law incapable of being elected, so any Member of Parliament accepting of those or any other disqualifying Office, is thereby render'd immediately incapable of sitting and voting in Parliament, and his Election is *ipso facto* void. By the same Rule, if a Commitment by the *House of Commons* renders a Man incapable of being elected, it likewise renders him incapable of continuing a Member, and then the Commitment of a Member is in it self an Expulsion, and all Votes of Expulsion, after a Commitment, are utterly unnecessary and superfluous ; But as it is most notorious that a Commitment is not in it self an Expulsion, and that many Members have continued a whole Sessions under Confinement, and afterwards sat again in the same Parliament, it necessarily follows, that Mr. *Walpole's* Imprisonment did not render him incapable of being elected, and in consequence He being duly and indisputably elected, had an undoubted right to sit and vote in this Parliament, as soon as his Imprisonment should be determin'd ; and 'tis unreasonable to suppose that an Imprisonment should make an Incapacity for the whole Parliament, when the Imprisonment it self does necessarily determine with the present Session.

THE single Question then is, Whether an Expulsion necessarily implies an Incapacity of being elected again into the same Parliament ?

ALL Incapacities must arise either from some known Law or Statute, or from the Usage and Custom of Parliament, which is the Law of Parliament. That there is any express Law or Statute, will not be pretended ; 'tis then to be consider'd, how far this Pretence can be supported by Precedents ; And in this Case it seems sufficient to insist, that there can be
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no Precedent given, where an Expulsion has been constru'd an Incapacity, unless it was at the same time made part of the Sentence, and declar'd expressly to extend so far; so that if it be a known Rule, that no Subject can incur any Penalty, or lose or forfeit any Right, Privilege, or Property, without the Authority of some Law, or Usage, and Custom, where that is the only Law, it will follow that an Expulsion ought not to be deem'd an Incapacity, if no one Instance can be given where it has been so judg'd by Parliament.

AND as it is necessary to show, that a bare Expulsion has of it self been constru'd an Incapacity, so it may very justly be infer'd an Incapacity having in some Cases been expressly inserted, and made part of the Sentence, that, were it is omitted 'tis not to be suppos'd that 'tis necessarily imply'd, because it would be needless at any time to express and declare what of it self must be thought a necessary Consequence.

AND here I cannot omit taking notice of a Doctrine which I heard advanc'd, I mean, *The Doctrine of Intendments*. I have heard of *Innuendos* in former Reigns, and heard it always exploded as the first instance of Tyranny and Oppression, that Men should be argued to be Guilty of Crimes by Construction, and suffer for the suppos'd meaning of the Law where they had offended against no express Law; but I never heard till now, that not only the Law, but that a *Sentence and Judgment did mean or intend*, or was to be suppos'd to *mean or intend* more than it really expres'd. If this is Law, in what a precarious State and Condition are the Lives and Properties of the Subject? If it shall ever be thought after Judgment pass'd and executed, that the Sentence did not express enough, shall any Man suffer farther beyond the express Words of a Sentence according to such Meanings or *Intendments* as Art and Ingenuity shall

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be able to put upon it? Such Doctrines had been proper for those Times and that Reign which made the *Revolution* necessary, but I hope will never prevail until the *Revolution* is entirely set a side; and we come to be openly told that the *Protestant Succession intended* what no body yet dreamt of; and that the Exclusion of all Papists did *not intend* the Exclusion of any body that shall call himself a Protestant.

No Man will deny that to be made incapable of being elected, is a further and an additional Punishment to the being expell'd, how then can it be thought just, when *the House* had proceeded to Censure and Punish as far as they thought the nature of the Crime requir'd, (and no body I believe thinks there was any Mercy or Lenity shown in the present Case) to add to their former Punishment the further Severity of declaring Mr. *Walpole* incapable of being elected, which at that time, if they had thought it reasonable, had been proper, and in their Power to do; but to make such a Declaration afterwards, is to expel him again, and to inflict another Punishment for the same Crime for which he must be thought to have suffer'd already very severely, and beyond all Precedent.

Will any man say, that *the House* might not without contradicting one Word of the Judgment pass'd upon Mr. *Walpole*, or without the Breach of any Law, Usage, or Custom of Parliament, have admitted Mr. *Walpole* upon his new Election? If so I will venture to affirm, that they ought to admit any Man whom they legally may, and not to admit a Man to the Enjoyment of a legal Right, is what Power for a time may support, but nothing can justify.

If no Law or Usage makes Expulsion an Incapacity, nothing but a Declaration of Parliament can do it; which having not been made previous to the Election, there could be no Incapacity at the time of the Election; and such a Declaration subsequent to the Election, is, in other Words, a second Expulsion. THE

THE Honour of *the House* is no way concern'd in admitting a Member upon a new Election whom they had before expell'd, unless they were themselves the Electors; They are the sole Judges who are duly and legally elected, but the *Corporations* have the sole Power of determining who are fit and proper Persons to be elected, under such Qualifications and Restrictions as the Law directs.

I will trouble you with no more Reasons and Arguments, but shortly touch upon all the Precedents that seem at all to affect the present Case.

THE Case of Mr. *Sloan* is the only Precedent that has been pretended to, but does not come up to the present Question: *The House* resolved, 'That Mr. *Sloan* in treating the Corporation of *Thetford*, 'had been guilty of a Breach of the Act of Parliament for preventing Expences in Elections; and thereupon the Election was void, and a new Writ was issued; and Mr. *Sloan* being again elected, the Question was upon the Construction of the Act of Parliament, how far the treating at the first Election was to be suppos'd to influence the second Election; and the Resolution that he was not capable to serve in Parliament, is not general, but confin'd to the Burrough of *Thetford*; so that Mr. *Sloan* was neither expell'd, nor declared incapable of sitting in that Parliament, as having been expell'd, but only not capable of serving for that *Burrough*, which he had corrupted, and where the former treating might be suppos'd still to operate, but he might have been chosen in any other *Burrough*, and sat in that Parliament, even after the last Resolution, and by consequence was under no such Incapacity as is now contended for.

THE Resolution in Mr. *Hall's* Case, in Queen ELIZABETH's Time, was, 'That *Arthur Hall* should be presently remov'd, sever'd, and 'cut off from being any longer a Member of this 'House,

' House, during the continuance of this present Parliament.' Which Sentence in our modern Language, is not only an Expulsion, but a Prohibition to his being again chosen into that Parliament; which is declaring him incapable, and making the Incapacity part of the Sentence and Punishment.

Mr. *Wollaston* was expell'd, re-elected, and sat in the same Parliament unmolested, and the Distinction that is made upon the Cause of his Expulsion, does not alter the Case, for 'tis the Sentence and Judgment of the House, if any thing, and not the Crime or the Occasion, that makes the Incapacity; and either every Man that is expell'd is thereby made incapable, or no Man.

SIR *Robert Sawyer* was likewise expell'd, and re-elected immediately after the Sentence of Expulsion was pass'd, in the Vacancy occasioned by his own Expulsion.

THESE Considerations prevail'd with me to be of Opinion, that if Mr. *Walpole* was to be try'd by the Law of the Land, or by the Law and Usage of Parliament, or by any known Rules of Reason and Justice, there was no Foundation to declare, that he was incapable of being elected a Member to serve in this present Parliament; and I am afraid that if his Case comes to be thoroughly considered, it will be thought a Hardship of the first Impression, that for a slight Offence, prov'd by no direct Evidence, vindicated by *positive Evidence upon Oath*, a Gentleman should be censur'd in the strongest Terms, imprison'd, and expell'd the House, and afterwards expell'd again.

F I N I S.



